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Sent: Monday, February 23, 2004 5:00 PM
To: Hanson, Jeffrey C.
Cc: Michele Pluta
Subject: NR 440 Review - Homework Assignment

Hi Jeff,

Michele Pluta and I did a review of NR 440. We word searched NR 440 for the words modification, modify, modified, modifies, etc. We created a document with these hits highlighted. We did not think that it would be worthwhile to provide a written summary for each hit. Our review of the hits identified the following two general areas that relate to NSR linkages:

- * General NSPS provisions (NR440.01 to 440.18)
- * Triggers for modification for each individual NSPS standard

The re-tooled NSR program where there could be NSPS implications are:

- * PALs
- * Actual to future actual
- * PCPs
- * We did not see any obvious implication issues for clean

units, but maybe there are.

It is very possible that a project would be exempted from NSR in these areas but could result in NSPS applicability. We are unclear what authority WDNR would have to change the current NR440 requirements compared to Federal, since they must comply with the Section 111 NSPS standards in order to gain SIP approval. NSPS modifications are triggered by an increase in hourly emissions rate relative to specific dates in the regulations, whereas NSR is triggered by an increase in annual emissions rates (tpy). Also, if you modify something to trigger NSPS, we believe this requires that a federal enforceable construction/operation permit. Thus, if something becomes applicable under NR440, the federal permitting process applies and the question to WDNR legal is whether there are any ways to shorten the current approaches. For example, if you have a PAL and make a change to an emissions unit that would not affect total annual emissions, but would increase the hourly maximum and thus trigger an NSPS standard, this change could not be made until the federal construction/operation permit approvals were complete for NSPS. There are similar examples that could be discussed regarding actual to future actual and PCPs.

We think a group discussion on this topic is needed sooner rather than later. Legal input on this topic will also be very important.

Annabeth

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